



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES
NASSAU REGIONAL OFFICE

October 1, 2008

Magistrate Judge William D. Wall
100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722-9014

Re: Gary Eriksen, Administrator of the Estate of Scott Eriksen v. County of Suffolk, the Suffolk County Sheriff's Department, et al., 06-CV-2036 (ADS) (WDW)

Dear Magistrate Judge Wall:

The New York State Commission of Correction Medical Review Board and five of its members, all of whom are represented by Andrew M. Cuomo, Attorney General of the State of New York, hereby moves pursuant to Fed R. Civ. Proc. 45(c) (3), by this letter motion to quash or modify the five (5) Subpoenas Duces Tecum in the above referenced action. These subpoenas are addressed to members of the State Commission of Correction Medical Review Board. I have spoken to Assistant Suffolk County Attorney Richard Dunne in a good faith effort to resolve this issue and informed him of my intention to file this letter motion.

The New York State Commission of Correction Medical Review Board is statutorily required to investigate the death of an inmate. See, Correction Law §47. The Board has done so with regard to the death of Scott Eriksen and has issued a report, copies of which have been provided to all parties.

The Court should quash or modify this subpoena for the following reasons. The investigative report prepared by the Commission Medical Review Board, is a public record that was prepared pursuant to a duty imposed by law and has already been disclosed to the parties. There is no articulated need to depose any of the non-party Board members in this matter.

Moreover, the subpoenas subject the Board members to an undue burden. The County of Suffolk has failed to show that absent their appearance, necessary and relevant testimony would not be available. It is respectfully submitted that the County of Suffolk has failed to demonstrate why the members of the Correction Medical Review Board are necessary and relevant to this case. The content of the investigative report may be received in lieu of the commission members' testimony subject to any limitations that would affect such testimony. In order to compel the deposition testimony of a Medical Review Board member there must be a showing that the member has particularized first-hand knowledge that cannot be obtained from another source. Sneaker Circus, Inc. V. Carter, 457 F. Supp. 771, 794 (E.D.N.Y. 1992). The purpose of the rule is both to leave officials free to conduct government business, see, e.g. Martin v. Valley National Bank of Arizona, 140 F.R.D 291, 314 (S.D.N.Y. 1991), but also to protect the mental processes of executives and administrative officers and thus promote open channels of communication in government. L.D. Leasing Corp., Inc., et. al. v. Crimaldi, et. al., 1992 U.S. Dist. LEXIS 18683 (E.D.N.Y. 1992).

The County of Suffolk has proffered nothing to support its demand for the Board members' testimony. Even assuming *arguendo* that the County of Suffolk seeks testimony regarding the factual statements and/or conclusions contained in the investigatory report, the subpoenas will not result in necessary and relevant testimony unavailable from other sources. The report was properly prepared pursuant to a statutory mandate.

Another ground for quashing these subpoenas is that the subpoenas are subjecting several of the individual members of the Correction Medical Review Board to travel more than 100 miles from where they reside, are employed, or regularly transact business in person, in order to comply with the subpoenas' mandate. Fed.R. Civ. Pro. 45(c) (3)(A)(ii) and (B)(iii). Dr. David Barry resides in Rochester, NY, and Dr. John Rugge resides in Lake Placid, NY all reside more than 100 miles from the Central Islip Courthouse in the Eastern District of New York and should be protected from the undue burden, expense, and loss of income resulting from appearing at overreaching pre-trial depositions in this action. In addition, service of the subpoenas was delivered without tendering the fees and mileage allowed by law

The Court should also protect all the commission members from being used as unretained

experts for either party, and from having to disclose information that does not describe specific occurrences in dispute and results from an investigation required by law that was not requested by a party. Fed. R. Civ. P. 45 (c) (3)(B)(ii). The subpoena power of the court should not be used to obtain expert testimony without paying appropriate compensation.

Based upon the foregoing, the five (5) subpoenas commanding the deposition testimony of the members of the Medical Review Board of the State Commission of Corrections should be quashed, as well as the documents sought by the subpoenas. (The Board's report has already been provided to all parties.)

Very truly yours,

A handwritten signature in black ink, appearing to read "Derrick J. Robinson". The signature is fluid and cursive, with the first name "Derrick" being more prominent.

Derrick J. Robinson
Assistant Attorney General

cc: Richard T. Dunne, Esq.
Suffolk County Department of Law

Enclosures

Issued by the
UNITED STATES DISTRICT COURT

-----EASTERN-----DISTRICT OF-----NEW YORK-----

GARY ERIKSEN, *Administrator of the Estate of*
SCOTT ERIKSEN,

v.

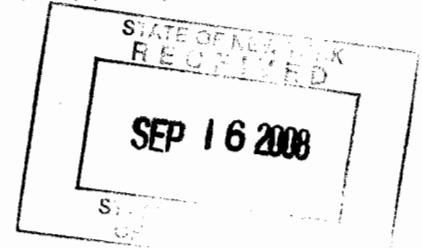
COUNTY OF SUFFOLK, THE SUFFOLK COUNTY
SHERIFF'S DEPARTMENT, ET AL.

SUBPOENA IN A CIVIL CASE

Case Number¹

Duces Tecum

06-CV-2036 (ADS) (WDW)



To: DR. DAVID BARRY
C/O New York State Commission of Correction
Medical Review Board
80 Wolf Road, 4th Floor
Albany, NY 12205-2670

☒ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM
DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION *U.S. District Court*
100 Federal Plaza
Central Islip, NY 11722

DATE AND TIME

October 1, 2008 10:00AM

(XX) YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All notes, memorandum, records, medical journals, medical reports, statements and reports referred to and/or relied upon in any manner during the consideration of and deliberations in the Board meetings of the New York State Commission of Corrections Medical Review Board on March 1, 2007 and June 7, 2007 with respect to Scott Eriksen (05-M-103) which led to the Medical Review Board's final decision which was sent to the Suffolk County Correctional Facility in June 2007.

PLACE United States District Court
Long Island Courthouse
100 Federal Plaza, P.O. Box 9014
Central Islip, New York 11722

DATE AND TIME

October 1, 2008

() YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30 (b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (indicate if attorney for plaintiff or defendant) DATE

Richard T. Dunne
Richard T. Dunne, Assistant County Attorney, Attorney for Defendants

09/11/08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christine Malafi, Suffolk County Attorney, 100 H. Lee Dennison Bldg., Hauppauge, NY 11788 631-853-4049
By: Richard T. Dunne, Assistant County Attorney

¹ If action is pending in district other than district of issuance, state district under case number.

Issued by the
UNITED STATES DISTRICT COURT

-----EASTERN-----DISTRICT OF-----NEW YORK-----

GARY ERIKSEN, *Administratr of the Estate of*
SCOTT ERIKSEN,
v.

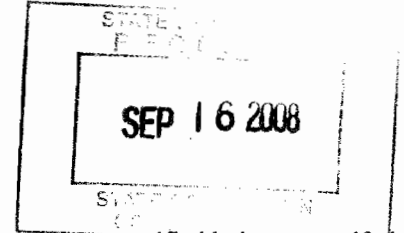
COUNTY OF SUFFOLK, THE SUFFOLK COUNTY
SHERIFF'S DEPARTMENT, ET AL.

SUBPOENA IN A CIVIL CASE

Case Number¹ *Duces Tecum*

06-CV-2036 (ADS) (WDW)

To: DR. JOHN RUGGE
C/O New York State Commission of Correction
Medical Review Board
80 Wolf Road, 4th Floor
Albany, NY 12205-2670



() YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM
DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

*US District Court
100 Federal Plaza
Central Islip, NY 11722*

DATE AND TIME

October 1, 2008 10:00 AM

(XX) YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All notes, memorandum, records, medical journals, medical reports, statements and reports referred to and/or relied upon in any manner during the consideration of and deliberations in the Board meetings of the New York State Commission of Corrections Medical Review Board on March 1, 2007 and June 7, 2007 with respect to Scott Eriksen (05-M-103) which led to the Medical Review Board's final decision which was sent to the Suffolk County Correctional Facility in June 2007.

PLACE United States District Court

Long Island Courthouse

100 Federal Plaza, P.O. Box 9014

Central Islip, New York 11722

DATE AND TIME

October 1, 2008

() YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30 (b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (indicate if attorney for plaintiff or defendant) DATE

Richard T. Dunne
Richard T. Dunne, Assistant County Attorney, Attorney for Defendants

09/11/08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christine Malafi, Suffolk County Attorney, 100 H. Lee Dennison Bldg., Hauppauge, NY 11788 631-853-4049

By: Richard T. Dunne, Assistant County Attorney

¹ If action is pending in district other than district of issuance, state district under case number.

Issued by the
UNITED STATES DISTRICT COURT

-----EASTERN-----DISTRICT OF-----NEW YORK-----

GARY ERIKSEN, *Administrator of the Estate of*
SCOTT ERIKSEN,

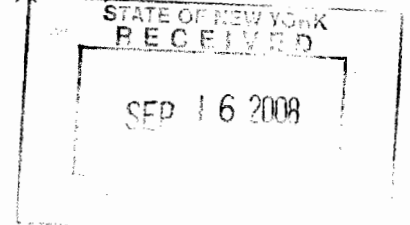
v.

COUNTY OF SUFFOLK, THE SUFFOLK COUNTY
SHERIFF'S DEPARTMENT, ET AL.

SUBPOENA IN A CIVIL CASE

Case Number¹ *Duces Tecum*

06-CV-2036 (ADS) (WDW)



To: DR. MICHAEL BADEN
C/O New York State Commission of Correction
Medical Review Board
80 Wolf Road, 4th Floor
Albany, NY 12205-2670

() YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM
DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

*US District Court
100 Federal Plaza
Central Islip, NY 11722*

DATE AND TIME

October 1, 2008 10:00AM

(XX) YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All notes, memorandum, records, medical journals, medical reports, statements and reports referred to and/or relied upon in any manner during the consideration of and deliberations in the Board meetings of the New York State Commission of Corrections Medical Review Board on March 1, 2007 and June 7, 2007 with respect to Scott Eriksen (05-M-103) which led to the Medical Review Board's final decision which was sent to the Suffolk County Correctional Facility in June 2007.

PLACE United States District Court

Long Island Courthouse

100 Federal Plaza, P.O. Box 9014

Central Islip, New York 11722

DATE AND TIME

October 1, 2008

() YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30 (b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (indicate if attorney for plaintiff or defendant) DATE

Richard T. Dunne
Richard T. Dunne, Assistant County Attorney, Attorney for Defendants

09/11/08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christine Malafi, Suffolk County Attorney, 100 H. Lee Dennison Bldg., Hauppauge, NY 11788 631-853-4049

By: Richard T. Dunne, Assistant County Attorney

¹ If action is pending in district other than district of issuance, state district under case number.

Issued by the
UNITED STATES DISTRICT COURT

-----EASTERN-----DISTRICT OF-----NEW YORK-----

GARY ERIKSEN, *Administrator of the Estate of*
SCOTT ERIKSEN,

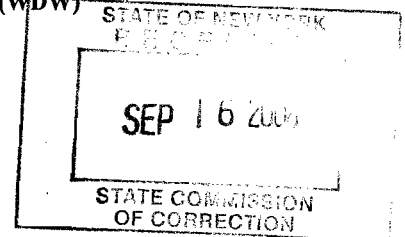
v.

COUNTY OF SUFFOLK, THE SUFFOLK COUNTY
SHERIFF'S DEPARTMENT, ET AL.

SUBPOENA IN A CIVIL CASE

Case Number¹ *Duces Tecum*

06-CV-2036 (ADS) (WDW)



To: DR. SCOTT COYNE
C/O New York State Commission of Correction
Medical Review Board
80 Wolf Road, 4th Floor
Albany, NY 12205-2670

() YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM
DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

*US District Court
100 Federal Plaza
Central Islip, NY 11722*

DATE AND TIME

October 1, 2008 10:00 AM

(XX) YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All notes, memorandum, records, medical journals, medical reports, statements and reports referred to and/or relied upon in any manner during the consideration of and deliberations in the Board meetings of the New York State Commission of Corrections Medical Review Board on March 1, 2007 and June 7, 2007 with respect to Scott Eriksen (05-M-103) which led to the Medical Review Board's final decision which was sent to the Suffolk County Correctional Facility in June 2007.

PLACE United States District Court

Long Island Courthouse

100 Federal Plaza, P.O. Box 9014

Central Islip, New York 11722

DATE AND TIME

October 1, 2008

() YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30 (b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (indicate if attorney for plaintiff or defendant) DATE

Richard T. Dunne

Richard T. Dunne, Assistant County Attorney, Attorney for Defendants

09/11/08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christine Malafi, Suffolk County Attorney, 100 H. Lee Dennison Bldg., Hauppauge, NY 11788 631-853-4049

By: Richard T. Dunne, Assistant County Attorney

¹ If action is pending in district other than district of issuance, state district under case number.

Issued by the
UNITED STATES DISTRICT COURT

-----EASTERN-----DISTRICT OF-----NEW YORK-----

GARY ERIKSEN, *Administratr of the Estate of*
SCOTT ERIKSEN,

v.

COUNTY OF SUFFOLK, THE SUFFOLK COUNTY
SHERIFF'S DEPARTMENT, ET AL.

SUBPOENA IN A CIVIL CASE

Case Number¹ *Duces Tecum*

06-CV-2036 (ADS) (WDW)

To: DR. PHYLLIS HARRISON-ROSS
C/O New York State Commission of Correction
Medical Review Board
80 Wolf Road, 4th Floor
Albany, NY 12205-2670

SEP 16 2008

() YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM
DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date and specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

*US District Court
100 Federal Plaza
Central Islip, NY 11722*

DATE AND TIME

October 1, 2008 10:00 AM

(XX) YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All notes, memorandum, records, medical journals, medical reports, statements and reports referred to and/or relied upon in any manner during the consideration of and deliberations in the Board meetings of the New York State Commission of Corrections Medical Review Board on March 1, 2007 and June 7, 2007 with respect to Scott Eriksen (05-M-103) which led to the Medical Review Board's final decision which was sent to the Suffolk County Correctional Facility in June 2007.

PLACE United States District Court

Long Island Courthouse

100 Federal Plaza, P.O. Box 9014

Central Islip, New York 11722

DATE AND TIME

October 1, 2008

() YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30 (b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (indicate if attorney for plaintiff or defendant) DATE

Richard T. Dunne
Richard T. Dunne, Assistant County Attorney, Attorney for Defendants

09/11/08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christine Malafi, Suffolk County Attorney, 100 H. Lee Dennison Bldg., Hauppauge, NY 11788 631-853-4049

By: Richard T. Dunne, Assistant County Attorney

¹ If action is pending in district other than district of issuance, state district under case number.